

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR., ATTORNEY)
GENERAL and REPORTER,)

Plaintiff,)

v.)

BLUEHIPPO FUNDING, LLC, a Maryland)
corporation, BLUEHIPPO CAPITAL, LLC,)
VIRGINIA, a Virginia corporation,)
BLUEHIPPO CAPITAL LLC, NEVADA,)
a Nevada corporation, d/b/a BLUEHIPPO,)
DIGITAL BOULEVARD, www.bluehippo.com,)
www.bigbluead.com, and www.approvalpc.com,)

Defendants.)

No. 2:08-cv-2785

JURY DEMAND

MOTION TO REMAND

The State seeks to remand this civil law enforcement action to state court because there is no basis for federal subject matter jurisdiction. The State respectfully requests expedited treatment of its remand motion so that, if granted, a temporary injunction hearing may be reset in state court as soon as possible. The State believes that the Defendants are continuing to violate the law and engage in unfair and deceptive commercial acts. The State does not request a hearing and believes this motion can be argued based solely on the pleadings.

BRIEF STATEMENT

The Defendants have asserted that this Court has subject matter jurisdiction based on diversity. While conceding that the State is not a citizen for purposes of diversity, the Defendants have asserted, based on the restitution remedy the State seeks, that it is not the true party-in-interest, and further that the jurisdictional amount-in-controversy has been met.

No jurisdiction exists based on the diversity of citizenship, because the State's Complaint and other pleadings when viewed as a whole demonstrates that the State is the real party-in-interest, which is not considered a citizen for diversity purposes. The underlying purpose of the State's action, which seeks wide-ranging injunctive, remedial, and other relief, when viewed as a whole, is not to vindicate the interests of select private parties, but to eliminate fraudulent and deceptive business practices in the marketplace in Tennessee. The State's Complaint seeks a declaration that the Defendants have violated the Tennessee Consumer Protection Act by engaging in unfair and deceptive acts or practices, extensive temporary and permanent injunctive relief, civil penalties that are payable to the State, restitution, and attorneys' fees and costs for its action.

Further, no jurisdiction exists because the Defendants cannot satisfy the amount-in-controversy requirement based on their own arguments. The Defendants cannot independently meet their amount-in-controversy burden because consumer restitution cannot be aggregated since the amounts sought do not involve a common or undivided interest and the aggregate amount for restitution is less than the \$5,000,000 class action threshold provided in 28 U.S.C. § 1332(d).

Because the Defendants' argument, even if followed, does not result in federal subject matter jurisdiction, the Defendants' removal was improper. Because the Defendants did not present an objectively reasonable basis for seeking removal, the State requests that it be awarded its attorney's fees under 28 U.S.C. § 1447(c). The State seeks \$1,650 in attorney's fees. See Exhibit 1 to this Motion, Aff. of Assistant Attorney General Brant Harrell

WHEREFORE, the State asks this Court to:

- (1) grant its motion for remand so that a temporary injunction hearing can be reset in state court at the earliest possible date;
- (2) award the State \$1,650 in attorney's fees under 28 U.S.C. § 1447(c);
- (3) award any other relief the court deems just and proper.

Respectfully submitted,

/S/ JEFF HILL

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Attorneys for the State of Tennessee

*Application for admission in W.D. Tenn. pending

CERTIFICATE OF CONSULTATION BY COUNSEL

Pursuant to L.R. 7.2(a)(1)(B), the undersigned counsel affirms that the State, through Assistant Attorneys General Brant Harrell and Anne Simmons, consulted with opposing counsel via telephone concerning its Motion to Remand on November 20, 2008, but was unable to reach an accord as to all issues.

/S/ JEFF HILL

JEFF HILL

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was filed electronically this 24th day of November, 2008. Notice of this filing will be sent by operation of the Court's electronic filing system to Gerald D. Neenan, Neal and Harwell, PLC, 150 Fourth Avenue North, Suite 2000, Nashville, Tennessee 37219.

/S/ JEFF HILL